.1.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 1684 OF 2003

The State of Maharashtra & anr ... Petitioners
vs
M/s Michigen Engineering Pvt.Ltd .. Respondent
..
WITH WRIT PETITION NO. 2803 OF 2003

The State of Maharashtra & ors .. Petitioners
v/s
Bharat J.Vyas .. Respondents
..
WITH WRIT PETITION NO. 2806 OF 2003

The State ofMaharashtra &ors .. Petitioners
vs
M/s Dabur India Ltd .. Respondent
..
WITH WRIT PETITION NO. 3052 OF 2003

The State of Maharashtra & anr .. Petitioners
vs
Kumar Mohit Burman .. Respondent
..
Mr.V.A.Thorat, Special Sr.counsel with

.2.

Mr.C.R.Sonawane AGP for Petitioners
Mr.Sunil Jayakar for Respondent

CORAM : D.G.KARNIK, J
DATE: 23RD JUNE, 2004.

P.C.

1. Heard Mr. Thorat learned senior counsel for the petitioners and Mr. Jaykar for respondents in all the writ petitions.

2. Learned counsel for the petitioners submitted that facts in all the writ petitions are identical except for the difference in gala numbers and area of the suit premises and narrated the facts in writ petition no. 1684 of 2003 as representative facts which are stated below :

3. The respondents in Writ Petition No. 1684 of 2003 is the owner of one unit bearing No. F-27 admeasuring 470 sq.ft. situated on 6th floor in the building known as "Commerce Centre" Tardeo (hereinafter referred to as the suit building) and the petitioner is the tenant. The

respondents in other writ petitions are the owners of some other units of different sizes situated in the suit building. The total area of all the units owned by the four respondents in these petitions is a little over 3000 sq.ft. There are many other units in the suit building owned by different owners but, they are not the subject matters of these petitions. The petitioner is in possession of about 38,380 sq.ft of area contained in different units situated on the 3rd to 7th floor of the suit

.2.

building. Offices of three departments viz. Industrial Safety and Health, Controller of Steam Biolers, and Labour of the Government of Maharashtra are situated in the suit building.

4. The respondents in each of these Writ Petitions had filed suits in the Small Causes Court, Mumbai for possession of the respective units owned by them on the ground that they required their respective premises reasonably and bonafide for their own use and occupation. In each of these cases, the trial court held that the respective respondents required the respective suit premises reasonably and bonafide for their own use and occupation. The trial court also held that greater hardship would be caused to the respective respondents by refusing to pass a decree than to the petitioners by passing a decree for possession. On appeal, the Appellate Bench of the Small Causes Court, Mumbai confirmed the finding of reasonable and bonafide requirement as also the finding on the issue of hardship.

5. At the hearing of the writ petition, learned counsel for the petitioners does not challenge the finding about the reasonable and bonafide requirement of the premises by the respective respondents. He however urges that greater hardship would be caused to the petitioner in each of these cases by passing a decree forpossessionk than to the respondents by refusing to pass the decree for possession. In the alternative, relying upon the judgment of the apex court in Bhimanagouda Basanagouda Patil vs. Mohd, Gudusaheb reported in 2003 (3) SCC 101. Mr. Thorat, learned Senior counsel for the petitioner submits that sufficient time should be granted to the petitioners to mitigate the hardship that was likely to be caused to them by passing the decree for eviction.

6. Mr. Thorat counsel submits that the trial

court as well as the appellate Bench erred in deciding the issue of hardship against the petitioners. The courts below did not take into consideration the relevant factors for considering the hardship. According to the learned counsel, the courts below ignored and/or did not properly appreciate and consider the following circumstances relating to the hardship:

(i) Though three offices of the government were situated in the suit building three departments were required to function cohesively and they required contiguous premises. Though it may appear that the area of 3000 sq.foot or a little more in respect of which the decree has been passed is a small part of the entire area of 38,805 sq.ft of the premises available with the petitioners in the suit building it would not be possible for the Government to shift all the three offices which were required to be located at one place.

.3.

(ii) The location of the suit premises was convenient to the labourers in the state who are required to visit these offices regularly. It was also convenient for the employers to visit one single premises at one place. If any part of the three departments which occupy the suit building were shifted elsewhere, people would be required to visit multiple places causing inconvenience.

(iii). Though the respondents had also acquired a plot of 4800 sq.meters (50,000 sq.ft) for construction of office building for the three departments concerned at Bandra Kurla Complex, Mumbai, the government does not have the necessary finance to carry out the construction and therefore it is not possible to carry out the construction on the said place in the near future. It was also argued that the said plot falls under C.R.Z zone and therefore construction was not possible thereon.

7. As regards the first contention, it can be said that the area of the premises in all the four petitions is a little over 3000 sq.ft which forms only a small part of 38,380 sq.ft of the total premises in occupation of the Government in the suit building. The Government of Maharashtra has recently built an ultra modern building at Ravindra Natya Mandir, Sayani Road, Prabhadevi, Mumbai in which a total of 15,700 sq.ft of area on the second, third and 4th floor

of the building is available with the Government. This fact is stated in the affidavit of Mr.Piyush Parekh sworn on 14th August, 2003 is not controverted by the petitioners. The Government can easily shift the present offices occupying 3000 sq.ft in the said new premises. The affidavit of Mr. Parekh further discloses that the Government had issued an advertisement in newspapers inviting tenders for letting out the said 15,700 sq.ft. A copy of the said advertisement is annexed to the affidavit. No affidavit in reply has been filed by the petitioners denying these averments. In the circumstances, it is clear that commercial premises of more than 15,000 sq.ft of area are available to the petitioners. The question that would still be required to be considered is to whether greater hardship would be caused to the petitioners by shifting only a part of the offices situated in the suit building, as contended by Mr. Thorat; learned counsel for the petitioners.

9. Shri Deogirikar, Assistant Commissioner of Labour who was examined as a Government witness, in his cross-examination, has stated that the offices located in the suit premises look after the implementation of 28 different Acts. The administrative control regarding the implementation of the said 28 Acts is exercised not only from the offices situated in the suit building but, also from the regional offices situated at Pune, Nasik, Aurangabad and Nagpur and Sub-Divisional Offices which are situated in every district. He further states that in many talukas, there are out offices and workers visit those out offices and district offices. Only when a problem cannot be solved by the district offices or the regional offices, the problem is referred to Mumbai office at the suit building. Therefore, occasions for the workers to visit suit building would be few if not rare. It is inconveivable that one person would have problems relating all the 28 Acts one and same point of time. Therefore the person concerned can visit only the relevant office with respect to which he is required to deal with. Decentralisation of the work at two or more place is not shown to cause any problem. In his evidence, Shri.Deogirikar has not stated that inconvenience, if at all any, would be caused by shifting some of the offices from the suit premises elsewhere. This submission of inconvenience is made only by the learned counsel and there is no foundation for it in the

evidence.

10. It is also not disputed that about 2000 sq.ft of the premises in occupation of the government situated on the 6th floor of the suit building were surrendered to one landlady Ms Shakuntaladevi. Learned counsel for the petitioners states that the premises were surrendered to Ms. Shakuntaladevi, who happens to be a blood relation of a former Central Cabinet Minister, because of a letter received from the office of the Prime Minister. If no inconvenience would be caused to the petitioners by surrendering one premises in the suit building then I fail to see how great inconvenience would be caused to them by being required to vacate some more premises. especially when the need of the respondents is not doubted. May be that the respondents are not as influential as to get a letter from the Prime Minister's office for vacating their premises but that cannot be a ground for denying them the decree for possession of the suit premises which they own and require reasonably and bonafide for their use.

11. The petitioner has also acquired a plot of about 4800 sq.meters (50,000 sq.ft) at Bandra-Kurla Complex, Mumbai. As per the learned counsel for the petitioners, it is the intention of the Government to shift all the three offices situated in suit building to the new building to be constructed at Bandra-Kurla Complex, Mumbai. The building plans for the proposed have been passed in the year 1996. The doubt as to whether the said plot falls under CRZ. zone has been cleared and it is now admitted that the plot does not fall under CRZ zone and there is no legal obstacle for carrying out the construction of a building on the said plot. In the supplementary affidavit in reply filed by Ms Bina Vishnu Prabhu, Deputy Secretary, Labour, Government of Maharashtra, Mantralaya, Mumbai, in this court on 8th March, 2004 it is stated that the Government has made available funds of Rs.141.61 lacs till June, 2002 and has further sanctioned Rs.25,00,000/- in December, 2003 and further funds of Rs.60.10 lacs would be sanctioned in the current financial year 2004-2005. Thus, in all funds of Rs.2.25 crores have been provided for the construction of the building at Bandra-Kurla Complex, Mumbai. As per the said affidavit, the estimated cost of construction of the entire building was Rs.4.69 crores which has been

revised to Rs.8.69 crores. Learned counsel states that the entire building would not be required to the present offices but other departments would also be housed therein and about 50 % of the building would be occupied by the present three departments. Thus, funds required for construction of 50 % of the building required to house all the offices in the suit building would be about Rs.2.35 crores (a per initial estimates) all of which have already been provided. Thus, as held by the Supreme Court in Bhimanagouda Basanagouda Patil supra, no hardship would be caused to the petitioners by granting them a reasonable time for vacating the suit premises within which time they can easily build a building at Bandra-Kurla Complex and shift the offices there. The suits were filed more than 12 years ago and the appellate judgment confirming decree for possession was passed on 15th November, 2002. The present writ petitions are filed in March 2003. The Government was certainly aware that from November, 2002 itself that a decree for possession has been passed by the trial court and confirmed by the appellate court. Hence, grant of time of three years from the date of judgment of appellate Court would in my opinion be reasonable. In my opinion, no hardship would be caused to the petitioners by granting them time to vacate till 31st December, 2005.

12. For these reasons the writ petitions are rejected subject to the condition that the decrees passed in the suits from which these petitionks arise shall not be executed till 31st December, 2005 on the petitioners filing an undertaking in this court within four weeks on the usual terms.

D.G.KARNIK, J

.PA